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Mr. John H. Robertus
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California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
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Attention: Agenda for Sediment Cleanup

Re: Tentative Cleanup and Abatement Order No. R9-2005-0126:
Comments for June 29, 2005 Public Workshop

Dear Mr. Robertus:

Enclosed are the Preliminary Comments of Chevron U.S.A. Inc. on the above-referenced Tentative Cleanup and Abatement Order. Please provide copies of these comments to the Regional Board members prior to the workshop.

Sincerely,


Christopher J. McNevin

Enclosure

Mr. John H. Robertus
California Regional Water Quality Control Board, San Diego Region
Attention: Agenda for Sediment Cleanup
June 15, 2005
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cc: (all w/enc.)
Mr. Tom Alo
Vincent M. Gonzales, Esq. – Sempra Energy
James J. Dragna, Esq. of Bingham McCutchen LLP – BP/Atlantic Richard
Captain A. J. Gonzales – Department of the Navy
Ms. Karen Henry – City of San Diego
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David L. Mulliken, Esq. of Latham & Watkins LLP – National Steel and
Shipbuilding Company
Mr. H. Allen Ferstrom – Marine Construction and Design Company

PRELIMINARY COMMENTS OF CHEVRON U.S.A. INC.
ON TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126
SUBMITTED FOR PUBLIC WORKSHOP ON JUNE 29, 2005

INTRODUCTION.

These comments are submitted to the California Regional Water Quality Control Board, San Diego Region ("Regional Board") on behalf of Chevron U.S.A. Inc., with respect to Tentative Cleanup and Abatement Order No. R9-2005-0126 ("Tentative CAO"). The purpose of these comments is to identify several of the major substantive and procedural defects associated with the Regional Board staff's proposal to name an entity identified as "Chevron, a subsidiary of ChevronTexaco" ("Chevron") as a party when the final CAO is issued. Based on our review of the allegations in the Tentative CAO, as well as the administrative record that relates to Chevron, it is clear that the Regional Board has not met and cannot meet the evidentiary burden necessary to name Chevron.

These comments are not intended to be comprehensive, but rather are offered to identify some of the more significant issues that the Regional Board must overcome if it is to name Chevron. Comprehensive comments cannot be provided at this time because Chevron was not provided access to the Regional Board's record until recently, and it is not clear whether access to the entire record has been provided. As a result, Chevron U.S.A. Inc. reserves the right to expand on these comments as it completes its review of the record. However, even a cursory review of the Tentative CAO reflects a complete lack of nexus between Chevron's historic operations in the San Diego Harbor area and the sediments that are targeted for remediation. As discussed herein, the "fingerprint" of sediment contamination is not characteristic of compounds stored or used at the Chevron sites.

In these preliminary comments, we review the allegations as to Chevron in the Tentative CAO, and then discuss the facts that are relevant to each allegation. In each case, it is clear that the allegation either is not supported by the record, or has nothing to do with the sediment contaminants that are proposed to be remediated.

Based on preliminary review of the Tentative CAO, Chevron U.S.A. Inc. also anticipates joining other parties who have expressed concerns regarding the unsupported findings as to impacts to beneficial uses and the proposed cleanup standards.

SUBSTANTIVE PROBLEMS WITH THE TENTATIVE CAO AS APPLIED TO CHEVRON.

General Observation: The Regional Board staff has not made the necessary showing to include Chevron as a "Discharger" in the Tentative CAO. Under the Water Code, the Regional Board is required to show with substantial evidence that a named party discharged waste in quantities or concentrations for which abatement is necessary. In other words, the named party must have contributed the specific, identified pollutants in concentrations that exceed the cleanup standard. It is the Regional Board's burden to demonstrate contribution, not the party's burden to prove non-contribution. The Regional Board cannot meet its burden in this case. While the Regional Board staff presumably has made some effort to determine whether Chevron should be named as a Discharger, the evidence does not support a determination that Chevron should be included.

At page 4 of the Tentative CAO the Regional Board staff makes a failed attempt to explain the basis for naming Chevron in the Tentative CAO, alleging that Chevron released PAHs and several metals to the Bay. These statements are either not accurate, or if accurate, do not support naming

Chevron as a Discharger in the Tentative CAO. The allegations as to Chevron made in the Tentative CAO are set forth here verbatim, followed by the relevant facts.

Tentative CAO Allegation #1: "Fuel products containing petroleum hydrocarbons and related constituents such as polynuclear [polycyclic] aromatic hydrocarbons (PAHs) have been stored at Chevron Terminal since the early 1900s at both the currently operating 7 million gallon product capacity upper tank farm and the closed 5 million gallon capacity lower tank farm."

Facts relevant to Allegation #1: The mere storage of petroleum products at the Chevron terminal does not link Chevron with sediment contamination in the Bay. Nor does it link Chevron with the PAHs of primary concern in the Tentative CAO, i.e. benzo(a)pyrene ("BaP") and anthracene. The record contains no evidence that Chevron stored or used products at the San Diego terminal which contained BaP or other high molecular weight PAHs ("HPAHs"). Gasoline and diesel stored at the sites contain aromatic hydrocarbons and very low concentrations of low molecular weight PAHs ("LPAHs.") As a general matter, PAHs in the fuel products stored by Chevron are highly undesirable because they are associated with engine fouling.

In contrast to Chevron's products, the sediments contained elevated concentration levels of 16 different HPAH compounds, some of which are at extremely high concentrations. The HPAH profiles in the sediment are inconsistent with the PAH profile for petroleum products stored at the Chevron Terminal. There is no evidence, let alone substantial evidence, that there is a connection between the products stored and handled by Chevron and the specific contaminants of concern in the sediment at or above the cleanup thresholds.

Tentative CAO Allegation #2: "Storm water flows from Chevron Terminal enter a City of San Diego MS4 storm drain that terminates in San Diego Bay in the Shipyard Sediment Site approximately 300 feet south of the Sampson Street extension."

Facts relevant to Allegation #2: The storm water flow from the Chevron Terminal cannot be shown to be the source of the contaminated sediments addressed in the Tentative CAO since Chevron did not use or handle products containing material concentrations of such contaminants.¹ Furthermore, storm water flows from the Chevron terminals have been and are captured and treated in a series of clarifiers prior to release to the storm water drain. NPDES monitoring records do not provide any indication that storm water discharges from the Chevron terminals would have caused sediment contamination in the area of the storm drain equal to or greater than the sediment threshold cleanup levels proposed by the Regional Board staff.

Tentative CAO Allegation #3: "Industry-wide operational practices, especially in the years prior to the State of California's passage of the Aboveground Petroleum Storage Act in 1990, often led to discharges from aboveground storage tank facilities such as the Chevron Terminal as a result of leaks and spills from tanks due to advanced age, defects in design or installation, human error, and equipment failure. Available records provide evidence of specific discharges of petroleum hydrocarbon pollutants from the Chevron Terminal facility to San Diego Bay at the Shipyard Sediment Site as a result of various spills and leaks in 1913, 1967 and 1973."

Facts relevant to Allegation #3: These statements would be of potential relevance only if the Regional Board staff had shown that Chevron products contained significant concentrations of the chemicals of concern. There has been no such showing. Furthermore, as noted above, the sediment chemistry fingerprints are inconsistent with the compounds used or stored at the Chevron terminals.

¹ Gasoline at the Chevron Terminal would have historically contained an organic form of lead known as tetraethyl lead. There is no evidence that the lead in the harbor sediments is associated with this form of organic lead.

The fire which occurred at the Standard Oil Company tank farm in 1913 was caused by a spark from a passing locomotive and is not an event which conferred liability under the Water Code. Also, it is likely any HPAHs that might have been released by this event would have undergone significant biodegradation over the 90 plus years since the fire. Staff have not analyzed biodegradation or demonstrated that any PAHs would have persisted. In addition, any potential impacts from the 1913 fire would have been covered by the fill material that was placed when the area now occupied by Southwest Marine and NASSCO was reclaimed from San Diego Bay. Again, staff have not analyzed this significant issue.

The 1967 spill involved no more than 400 gallons of diesel fuel from a gasket leak. The phase-separated hydrocarbons (PSH) in soil at the Terminal site which may be associated with this leak do not extend beyond the south edge of the historic location of Belt Street. There is no report of any release to San Diego Bay from this leak and there is no evidence that it has migrated to San Diego Bay. Further, the release did not contain substances that would cause sediment contamination equal to or greater than the sediment cleanup levels proposed by the Regional Board staff. Diesel fuel does not contain HPAHs, metals or other compounds at levels that would lead to concentrations above any legitimate cleanup levels.

The 1973 release was not attributable to Chevron. Apparently an estimated 200 gallons of petroleum was found on the Bay surface near the San Diego Marine Pier approximately 1,000 feet northwest of the Chevron Terminal site at the foot of Sampson Street. A small stream of product was reportedly coming from an underground pipe into an open holding basin outside the NW corner of the Chevron Terminal. The source of the product was not identified as coming from Chevron, and there were five other sites that are possible contributors to the storm drain. There is no evidence that the spill was from Chevron and no evidence that it involved the specific PAHs at issue in the Tentative CAO, or at concentrations equal to or greater than the sediment cleanup levels proposed by the Regional Board staff. In any case, it is highly unlikely that 200 gallons of gasoline released in 1973 would have left any currently identifiable trace.

Tentative CAO Allegation #4: "Elevated concentrations of phase separated hydrocarbons (PSH) pollutants have also been found in soil and ground water at the upper and the former lower tank farm site. These pollutants may eventually migrate to San Diego Bay at the Shipyard Sediment Site via various preferential pathways."

Facts relevant to Allegation #4: According to a report prepared by LFR Levine-Fricke dated July 13, 2004, measurable PSH has not been shown to extend south of Belt Street, and no PSH has been detected in the soil or ground water at the former lower terminals. Groundwater samples from the former lower terminals have had dissolved benzene concentrations of less than 5 micrograms/liter, indicating no significant contamination. The release to soil has been closely monitored since March 1986 and has shown little if any movement from beneath the Chevron Terminal. Given the fact that this release has not been shown to have reached or even be moving toward the Bay, and given the fact that the product contained little or no PAHs of concern in any event, this statement is little more than irrelevant conjecture. There is no evidence of a connection between the alleged release and the specific contaminants of concern in the sediment at or above the cleanup threshold, and no evidence that any "preferential pathways" have transported this material to the Bay.

Tentative CAO Allegation #5: "Chevron also discharges storm water runoff from Chevron Terminal to San Diego Bay at the Shipyard Sediment Site subject to the terms and conditions of the statewide Industrial NPDES Storm Water Permit. Monitoring reports submitted by Chevron during the years 1994 through 2004 indicate elevated levels of zinc, cadmium, and copper are consistently present in the storm water discharge from the site."

Facts relevant to Allegation #5: It is generally recognized that atmospheric deposition is the predominant source of metals in storm water (see Sabin et al., 2004, in SCCRWRP's 2003-2004

Biennial Report). The record does not demonstrate that site practices or materials stored onsite by Chevron contributed to metals in storm flows at any material level. Further, test borings at the Shipyard Sediment Site in the neighborhood of the municipal storm water discharge point that includes Chevron storm water (i.e., at Exponent [2004] sample sites SW20 through SW25 between Pier 3 and Pier 4), show relatively low sediment metals concentrations, with the exception of mercury which is not attributed to Chevron. The test borings referenced (SW20 through SW25) do indicate levels of PAHs, PCBs and butyltins that exceed the Tentative CAO remediation levels. However, as pointed out earlier, those PAHs show a chemical signature quite different than Chevron's products, and Chevron did not use PCBs or butyltin.

The "Alternate Sediment Cleanup Levels" for these metals are presented in a table on page 26 with a footnote that is incomprehensible, and without any economic or scientific rationale. These "Alternative Sediment Cleanup Levels" seem to be an incidental effect of the remediation of tributyltin, B(a)P and PCBs, not concentrations of other compounds for which remediation is justified on any independent basis.

PROCEDURAL PROBLEMS WITH THE TENTATIVE CAO AND ASSOCIATED PROCEEDINGS.

Chevron U.S.A. Inc. objects to the Regional Board staff holding this workshop without providing a staff report or other document that provides a clear basis and justification for staff's findings in the Tentative CAO. This is particularly troublesome because the findings pertaining to Chevron are neither accurate nor relevant to the cleanup proposal, and no evidence is offered to support the contention that materials from Chevron's terminal locations contributed to the sediment levels that the Regional Board staff believes requires remediation. The Regional Board should direct staff to issue a specific and definitive document to support the assumptions, findings and basis for naming Chevron in the CAO, since the administrative record does not support such action.

Parties named in the Tentative CAO cannot reasonably refute the unsupported claims of the Regional Board staff without knowing the underlying basis for the findings. The Regional Board staff's failure to provide this basis raises serious due process issues as to Chevron. A simple analysis of the potential source materials associated with Chevron's operations shows that such operations have not contributed to the sediment contamination at levels that the Regional Board staff wants to remediate, and it is insupportable to name Chevron in the tentative CAO.

Furthermore, naming Chevron on the Tentative CAO in and of itself may improperly influence the Regional Board members' perception as to Chevron's role with respect to sediment contamination in San Diego Harbor. It is respectfully requested that Regional Board members keep an open mind as to who should and should not be named in the Tentative CAO.

In summary, there is no basis for Chevron to be designated as a Discharger in this CAO.

REFERENCES.

LFR Levine-Fricke (LFR) 2004. Technical Data Report, Chevron San Diego Terminal. Technical report prepared for Chevron Products Company and Chevron Environmental Management Company, Brea, California.

Exponent 2003. NASSCO and Southwest Marine Detailed Sediment Investigation, Volume I. Prepared for NASSCO and Southwest Marine, San Diego, California.

Sabin, L.D., K.C. Schiff, J.H. Lim, and K.D. Stolzenbach 2004. Atmospheric dry deposition of trace metals in the Los Angeles coastal region. In: Southern California Coastal Water Research Project (SCCWRP) 2003-2004 Biennial Report. pp. 50-60.